

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

Statement by

Lillian Borrone

Director of Port Commerce

The Port Authority of New York and New Jersey

on

Ocean Disposal of Dredged Material

November 5, 1999

Good morning, Mr. Chairman, my name is Lillian Borrone. I am the Director of Port Commerce for The Port Authority of New York and New Jersey with responsibility for the operation of five marine terminal facilities in the largest port on the East Coast of North America, the third largest in the United States. We appreciate being included in your subcommittee consideration of this matter that pertains to vitally important port dredging activities.

Mr. Chairman, while I am not able to speak with expertise on living marine resources I can speak with confidence regarding the importance of channel dredging to the region's role as a major international gateway. I am also pleased to comment on how the Federal government implements pertinent law and regulation intended to protect our environment.

The Port Authority of New York and New Jersey is a bistate agency created in 1921 by the two states and consented to by the Congress to protect and promote the commerce of the New York-New Jersey region. The Port is a vital part of the region's commerce supporting over 165,000 jobs and contributing more than \$20 billion in economic activity. We partner with private companies to provide the marine terminal facilities and infrastructure that support the flow of approximately one and a half million containers of goods a year to the 17 million consumers that live in the New York- New Jersey metropolitan region and to those of many states beyond.

Significant components of the Port's infrastructure are the channels and berths that serve as the highways and driveways for the more than 4,500 commercial ships that call on the Port each year. Because our harbor is a river port, its depths are naturally shallow averaging about 18 feet throughout the harbor; however, today's commercial vessels need channel depths of as much as 50 feet. In order to ensure the safe navigation of modern ocean-going cargo vessels, it is essential that the Port be dredged to project depths on a routine basis. We estimate that there is a need to dredge about 3 to 4 million cubic yards of clay, silt and sand every year.

Once dredged, this material must be placed somewhere. Until the mid 1990s, the historic and only disposal site for dredged material was the ocean Mud Dump site located six miles off of Sandy Hook, New Jersey. However, in the mid-90s dredging in the Port virtually ground to a halt, as groups challenged the ocean disposal of dredged material that contained trace levels of certain contaminants and Federal regulatory agency decision making stalled. The result was called "Mud-Lock" and the port community had no means of predicting from one dredging project to the next whether or not the project could move forward, how and where dredged material would be disposed and at what cost. The situation reached crisis proportions in 1995 when dredged material from the Port of New York and New Jersey had to be sent all the way to Utah for disposal at a cost of over 20 times the usual price.

In 1996, an agreement was brokered by Vice President Gore that closed the ocean Mud Dump and redesignated the site as the Historic Area Remediation Site or HARS. The letter that outlined the agreement and was signed by the Administrator of EPA and the Secretaries of Transportation and the Army (for the Corps of Engineers) clearly stated that the HARS would be remediated with uncontaminated dredged material, "i.e. dredged material that meets current Category 1 standards and will not cause significant undesirable effects including through bioaccumulation." EPA published a rule designating the HARS and stating that "current" regulation under the Ocean Dumping Act will be used to judge whether sediments meet Category 1 standards and can be used to cap the HARS. After years of uncertainty in the federal permit process, the Port and its private sector partners had reason to expect a return to a predictable process and standards for obtaining permits and determining disposal options and dredging costs. And the promise was made in that July 1996 letter that designation of the HARS "will assure long-term use of category 1 dredge material."

We take pride in the tremendous steps taken to meet our dredging disposal needs. For almost five years now, the varied interests in our region--from the maritime and business sector to environmental and community interests--have forged a partnership to address environmental concerns in our waterways, while supporting continued economic growth. Government, business and environmental organizations meet regularly to discuss and plan ways to address both improvement of the estuaries and how port development can be accomplished. The quality of our waterways and fish and marine habitats has improved as a result of the good efforts of government and community at all levels including here in this subcommittee. Creative dredged material management solutions have been developed and new companies formed to transform dredged sediments into a resource with beneficial reuses including for remediation of brownfields. And while there have been some hitches along the way much has been achieved through strong advocacy of our respective views, cooperation, mutual respect and fulfilling commitments.

Unfortunately, the regulatory framework is again in doubt. An oil importing company in Queens, New York, began the process over two years ago to obtain the necessary permits to remove 90,000 cubic yards of material from its berths. The material to be dredged underwent all of the rigorous testing required by the Federal government and was determined to be suitable for use as beneficial remediation material at the HARS. The judgments of the Corps of Engineers and the Environmental Protection Agency notwithstanding, opposition was voiced to the placement of the material at the HARS. This opposition has led to a delay in the issuing of the permit and concerns about other dredging projects in the immediate future.

Perhaps in response to this opposition, EPA is said to be considering announcing the implementation of new criteria to determine what sediments qualify as Category 1 material. If that is the case, we strongly urge that no changes should be implemented and applied to existing or pending permits until those proposed changes

are thoroughly considered and subjected to a procedure suited to such matters of substantive policy. There should be a process of reasonable duration and framework. The assessment should include considerations such as: Is there a scientific, objective basis for making a change? What projects would be affected? What specific, practical alternatives would be available to accommodate the additional demand for capacity? How long it would take to provide that capacity? What would such a decision mean to the effect on the HARS itself? What would be the remediation schedule? What material and how much would be available to be used to cap the former Mud Dump?

In short, there should be a well-founded, rigorous process to evaluate any new criteria and we want to be active participants in that process.

The delay in processing the permit for the terminal has sent a shudder through our port and the maritime industry. There are fears that the 1996 framework that has worked well for the past 3 years is now in jeopardy and that, once again, our Port faces uncertainty regarding implementation of federal policy regarding the disposal of dredged material. Are we to return to "Mud-Lock"?

Mr. Chairman, as I noted earlier we are here before you today not to address the impacts of dredged material disposal on marine resources. We rely on Federal agencies to adequately protect our living marine resources in implementing federal law. Instead, I am here to address the impacts of an uncertain regulatory environment on the operation of a public port. And, again, we depend upon the agencies--to implement law and regulation fairly and efficiently.

Unpredictability in the Federal process serves neither economic interests nor environmental interests. The impact on the Port is significant in terms of cost, infrastructure planning and regional business. If there is doubt as to which federal policies will apply when, then we cannot adequately plan or budget for the projects that are critical to the safe navigation of vessels in our harbor. The immediate impact is diversion of cargo to other ports that are able to meet their dredging needs and the long-term implications of that can mean the relocation of companies and shipping lines to other ports. We saw cargo leave for Canada earlier this decade specifically because channel maintenance and improvement was in doubt. This year Maersk Lines and Sea-Land agreed to remain in the Port of New York and New Jersey for the next 30 years with a commitment by the Port Authority that the Port will have 45-foot channels and berths by 2004 and 50-foot channels in 2009. We must have certainty as to where material dredged from our channels for these projects will be placed if we have any hope of meeting this aggressive, cost-saving schedule.

Therefore, it is incumbent upon the Federal government to provide a predictable permit process instead of one that has been in varying stages of equivocation during this decade and under almost ceaseless attack from those who would stop ocean disposal, even the placement of Category 1 material at the HARS. Federal agencies must apply fairly, objectively and promptly the standards and criteria they themselves established, and then stand by their decisions. The criteria and standards must be scientifically based and supportable. Any alterations to them must be decided only after an exhaustive and public process.

Mr. Chairman, it is also important to note that the restrictive ocean disposal policies in place in our region apply nowhere else in the nation. We are concerned by the fact that dredging activities are more costly in our region than in most others and how it has become a competitive factor vis-a-vis other ports. We wonder why these very serious concerns in the port community are seemingly not shared by others. We fully appreciate the imperative that dredged material management must be done in an environmentally respectful way. We have worked with the states to identify other means of managing dredged materials including beneficial uses and are even excited by the possibilities. However, where there is a legitimate opportunity to

use comparatively clean sediments as cap at the ocean site--and at a competitive cost to the Federal government and to local port interests--then the Federal government should allow that to happen within the framework of existing law and regulation.

Thank you, Mr. Chairman for this opportunity. I would be happy to answer any questions.

#